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BOARD OF PUBLIC UTILITIES

Regulations of Cable Television

Readoption with Amendments: N.J.A.C. 14:18

Proposed: January 6, 2003 at 35 N.J.R. 100(a)
February 19, 2003 at 35 N.J.R. 1047(a) (N.J.A.C. 14:18-3.5(a)5)

Authorized by: Celeste M. Fasone, Director, Office of Cable Television (with approval of the Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Commissioner; Carol J. Murphy, Commissioner, Connie O. Hughes, Commissioner and Jack Alter, Commissioner)

Filed: _____, 2003, as R. ____ d. _____, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3)

Authority: N.J.S.A. 48:5A-10

BPU Docket Number: CX02040265

Proposal Number: PRN 2003-15

Effective Date:

Expiration Date: December 27, 2006

The purpose of this rulemaking is the readoption, with amendments, of the Office of Cable Television's (OCTV) substantive regulations governing cable television operation and franchising.

The notice of proposed readoption with amendments was published in the New Jersey Register on January 6, 2003 at 35 N.J.R. 100(a), which included a public hearing held on February 19, 2003. Notice of the hearing was published in nine daily newspapers whose general circulation covers the State. In addition, all cable television operators and interested parties listed with the OCTV under N.J.A.C. 1:30- 5.2(a)3 were mailed a copy of the hearing notice. Written comments were accepted

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through March 7, 2003 for the main portion of the rule. A Notice of Administrative Correction was published on February 18, 2003, at 35 N.J.R. 1047(a), covering the Board of Public Utilities (Board) proposal for outage credits (N.J.A.C. 14:18-3.5(a)5). Comments were accepted through April 19, 2003 for that portion of the rule only. The proposal was discussed and approved for adoption at the Board's October 22, 2003 public meeting.

Summary of Hearing Officer Recommendation and Agency Response

The public hearing was held on February 19, 2003 at the Offices of Board of Public Utilities in Newark, New Jersey. There were three persons offering testimony at the public hearing: the Division of Ratepayer Advocate, AT&T Local Network Services and the New Jersey Cable Telecommunications Association. Commissioner Frederick Butler and Commissioner Connie Hughes served as hearing officers. The hearing officer recommended that this rule action proceed to adoption. Six persons submitted written comments during the public comment period.

A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Board of Public Utilities
Office of the Secretary
Attn: Docket No. CX02040265
Two Gateway Center
Newark, New Jersey 07102

Summary of Public Comments and Agency Responses:

Comments were received from:

Karen Alexander, President, New Jersey Cable Telecommunications Association.
Seema M. Singh, Esq., Ratepayer Advocate and Director, and Ava-Marie Madeam, Assistant Deputy Ratepayer Advocate, on behalf of the Division of the Ratepayer Advocate.

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Anthony Giovannucci, on behalf of AT&T Local Network Services.

Cynthia T. McCoy, Esq., AT&T; Charlene Brown, Esq., AT&T and James H. Laskey, Esq., Norris McLaughlin & Marcus, for AT&T Communications of New Jersey, LP.; TCG Delaware Valley, Inc.; and Teleport Communications New York.

Bernard J. Lechner, Chairman, Lawrence Township Cable Telecommunications Advisory Committee.

B. Sachau, Florham Park.

Pauline Foley, Esq., on behalf of Public Service Electric and Gas Company .

Regulatory Policy

COMMENT:

The New Jersey Telecommunications Association (NJCTA), at the public hearing on February 19, 2003, advocated that the Board take a “fresh look” at the way the industry is regulated with a view towards reducing rather than increasing regulation. The NJCTA contended that the proposed rules add to the traditional command and control regulatory framework, despite historic changes in the cable television industry.

RESPONSE:

As part of the review of the continuing relevance of the regulations, the Board considered the original basis for the various groups and categories of rules involved. Numerous obsolete provisions were eliminated under prior readoptions in 1985, 1990, 1995 and 2000. Many rules must be retained in recognition that the marketplace is not yet fully competitive. A brief synopsis of the origin and rationale for continuation of the rules follows:

Subchapter 13 was initially adopted in 1985 following the enactment of the federal Cable Television Act of 1984, which created a presumption of renewal and imposed requirements on franchise authorities considering whether or not to renew cable television franchises. The rules were designed to insure compatibility with existing state statutes concerning franchising. The relevant state and federal statutory provisions had not been amended at the time of proposal. Subsequently, the State Legislature did amend the Cable Television Act to allow for joint municipal action on renewal municipal consent

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applications. (L. 2003 c. 38) Rules and regulations required under this act will be addressed in a separate rulemaking.

Subchapter 12 concerning Certificates of Approval (COA) was established to set forth the information needed by the OCTV, and guide the Board, operators and municipalities in processing the petitions.

Subchapter 11 sets out the information required and process to be followed by municipalities when considering municipal consent applications, which are the first stage of an initial franchise proceeding, and the middle stage of the renewal process. These rules continue to be relevant and applicable to both initial franchises and renewals. The Board has, however, previously consolidated the municipal consent and COA application into a single form. Certain amendments, such as N.J.A.C. 14:18-11.10 and N.J.A.C. 14:18-11.11, to the original rules established clarifications in response to litigated issues.

Subchapters 9 and 10 originally included detailed technical and testing standards. Many of these have previously been eliminated due to federal rule changes, pre-emption or loss of relevance. Presently, these rules enable the OCTV to obtain information that allows it to insure compliance and enforcement of federal technical standards and local franchise commitments.

Subchapter 8 is needed to insure documentation of compliance with a statutory requirement.

Subchapter 7 was established to consolidate various filings required by the OCTV in order to perform its duties under the New Jersey State Cable Television Act (Cable Television Act), N.J.S.A. 48:5A-1 *et seq.* Additions have been made at various times, such as N.J.A.C. 14:18-7.5, requiring companies establish written procedures for the use of public, education, and governmental access channels when they are managed by the cable television companies. Another example is the requirement to provide information on the company's telephone system used by customers, (N.J.A.C. 14:18-7.6), and its performance (N.J.A.C. 14:18-7.7). These rules were developed to address recurring problems encountered by customers. OCTV data shows fluctuations in cable television operators' telephone system performance that support retaining the rule. The new rule, N.J.A.C.

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14:18-7.8, requires conformance with federal telephone answering standards, which the industry was presumed to have complied with since 1994.

Subchapter 6, most of which dates back to the OCTV's original rules, establishes minimal records which must be kept by the cable television operator to insure that the OCTV can meet its enforcement and compliance obligations.

Subchapter 5 includes a longstanding essential requirement to insure that the OCTV has sufficient information to be able to contact necessary cable television company personnel in the day-to-day fulfillment of its mandates. This information is even more vital for maintaining emergency preparedness and response in today's environment. N.J.A.C. 14:18-5.1 was added in 1991 to insure that the Board had an opportunity to consider any office location changes that might adversely affect safe, adequate and proper service to customers, as well as providing for sufficient notice to municipalities and the OCTV so that they may determine whether such changes would be in compliance with the terms and condition of franchises within the affected municipalities.

Subchapter 4 consists of rules that were grouped together in 1991 that are known as "cable television operator rights". Most of these were established in the Board's original rules laying the groundwork for the relationship between cable television companies and their customers. N.J.A.C. 14:18-4.5 was added in 1986 in response to court decisions concerning the cable television operator's statutory right of access to multi-unit dwellings. N.J.A.C. 14:18-4.12 is being adopted to mirror federal standards, except where the federal standards go beyond what the Board can regulate, for the use of "home-run" wiring in multiple dwelling units to address situations where the owner of the multiple dwelling unit has an ownership interest in the wiring and where the owner does not. N.J.A.C. 14:18-4.13 is being adopted to mirror federal standards to clarify the rights of a property owner to use in-place molding in multiple dwelling unit situations.

Subchapter 3 was established in 1991 to consolidate some previously existing customer rights regulations along with a "bill of cable television customer rights." They are based on the complaints brought to the OCTV, and through the day-to-day experience of the staff of the OCTV in fulfilling its legislative mandates. The subchapter also incorporates relevant federal customer service standards that

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cable television operators already have an obligation to comply with.

Subchapter 2 regulations govern plant operation, and require compliance with various national safety codes and standards. These were included in the original Board regulations and address questions of safe, adequate and proper service. In 1985, regulations governing pole attachment rates were added to formalize previous Board orders and to comply with new federal requirements. New rules have been added to conform the Administrative Code to all appropriate federal regulations. Consistent with the Telecommunications Act of 1996, the amendments and additions to the rules both here and elsewhere in Chapter 18 provide competitive equity for all users of poles, ducts and conduits.

Subchapters 1 and 14 are technical and definitional regulations for implementation of the regulations in general, derived from the Cable Television Act.

COMMENT:

The NJCTA recommended “performance based” regulation rather than regulations that require numerous statistical reports that do not benefit customers.

RESPONSE:

The Board declines to go to performance based standards as setting such standards would involve restructuring the Administrative Code and relieving the industry of meeting specified responsibilities under federal and state law. While the NJCTA has argued that the OCTV’s complaint statistics are not an accurate representation of the number of complaints received, the fundamental operative fact is that complaint volume has increased in the past years. The state’s cable television operators must demonstrate that they can perform in a responsible manner by significantly reducing customer complaints before the Board can consider basing its rules solely on performance.

COMMENT:

The Division of Ratepayer Advocate (DRA) supported the Board’s decision not to adopt the proposal of the NJCTA in N.J.A.C. 14:18-14.7, which would have allowed a cable television operator that has received a finding of effective competition to be exempt from all state rules that exceed federal standards. The DRA stated that it agreed with the Board that the cable television operator’s customer

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service obligations do not evaporate upon an effective competition finding. The DRA further stated that the Board, as franchising authority within the State of New Jersey, is charged with protecting the public interest.

RESPONSE:

The Board notes the DRA's endorsement.

COMMENT:

The Lawrence Township Cable Telecommunications Advisory Committee (LTCTAC) suggested that the Board amend N.J.A.C. 14:18-3.20(d) to require that senior citizens may establish eligibility for a senior discount by certifying that the individual is 62 years of age or older and that no more than one other person under the age of 62 resides in the same dwelling unit.

RESPONSE:

The modification requested by the LTCTAC in N.J.A.C. 14:18-3.20(d) is not within the purview of the Board. The Legislature, at N.J.S.A. 48:5A-11.2, determined that eligibility for a senior discount must conform to the eligibility requirements of the Pharmaceutical Assistance for the Aged and Disabled at N.J.S.A. 30:4D-21. The Board cannot establish rules that conflict with current law.

Technical Corrections

COMMENT:

The LTCTAC stated that the phrase "Total common on pole", in N.J.A.C. 14:18-2.9(a)6 should be "Total common space on pole".

RESPONSE:

While the phrase "total common on pole" has existed in the rules since the section's adoption in 1985, it should reference "Total common space on pole." The term "total common on pole" does not conform to subsection (c) nor does it correctly reference what the provision means. The provision deals with calculation of pole attachment rent, which uses as a multiplier the space on the pole.

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COMMENT:

The LTCTAC recommended that the Board amend N.J.A.C. 14:18-4.5(c) from “said obligation. A cable” to “said obligation, a cable”.

RESPONSE:

This appears to be a typographical error in the text of the rule and therefore the Board has amended the rule to reflect correction of the error.

COMMENT:

The LTCTAC recommended that the Board amend N.J.A.C. 14:18-4.9(a) to require that a cable television operator return a customer’s deposit within 30 days instead of “promptly”.

RESPONSE:

The Board, as part of its proposal, has included portions of the federal customer service standards to the extent that they address areas not covered by current regulations or where the federal rules exceed the Board’s rules already in place. Changes in this section provide, among other things, a requirement that refunds or credits be issued in the earlier of 30 days, the next billing cycle, or upon return of customer equipment. The Board believes that this addition at 14:18-3.25 addresses the LTCTAC’s concern without further modification to the rule.

COMMENT:

The LTCTAC suggested that the Board amend N.J.A.C. 14:18-3.20 to change the heading to “Discounts for senior and/or disabled citizens” and in all other instances to read “senior and/or disabled citizen discount” instead of the current “senior and disabled”.

RESPONSE:

The Board believes that this modification is reasonable; is not substantive and has changed all instances of “senior and disabled” to “senior and/or disabled” in the adoption.

COMMENT:

The LTCTAC suggested that the Board amend N.J.A.C. 14:18-14.7 to reference that the

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effective competition cite in federal law is 47 CFR § 76.915, not 76.905 as currently written.

RESPONSE:

The revision has been made.

Tariffs

COMMENT:

With respect to N.J.A.C. 14:18-3.3(c), which requires cable television companies to provide every new customer with a complete copy of the company's tariff containing all rates, terms and conditions applicable to that type of customer, for example, residential, commercial, etc., the NJCTA reiterated the argument it made in its informal comments. The NJCTA suggested that cable television operators be given the ability to submit the same rate cards provided to customers to the Board in lieu of filing tariffs. In essence, the NJCTA proposed to eliminate the requirement for a tariff filing, which it believes is preempted by federal law.

RESPONSE:

The Summary of this proposal, at 35 N.J.R. 101, stated the rationale for not considering NJCTA's recommendation. The Board stated: "...the Board requested that the cable television industry submit a proposal. The NJCTA did not provide the Board with a proposal. Therefore, at this time, the Board does not propose to amend this section." The NJCTA, in its March 7, 2003 comments neither rebutted nor cured the above cited failure or omission. Accordingly, the industry was given ample opportunity. The Board declines to consider amendments to N.J.A.C. 14:18-3.3 (c). Additionally, the board disagrees with the contention that the requirement is in contravention of federal law, as 47 U.S.C. § 544(h) and 47 C.F.R. § 76.1603, among other sources, provide the Board with the necessary authority to implement this provision. In addition, 47 C.F.R. §76.309 (a)3 allows state or franchising authorities to enact or enforce any consumer protection regulation not specifically preempted in that section.

COMMENT:

The NJCTA stated that it had proposed that the Board allow a cable television operator to

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submit the same rate cards provided to customers in lieu of tariffs provided to the Board (and customers upon request) and was disappointed that the Board did not accept its proposal.

RESPONSE:

The Board and the OCTV were amenable to reviewing any proposal submitted by the industry that would combine the rate cards and tariffs as one document. However, despite requests by the OCTV for this information, the NJCTA and its member companies did not provide a proposal. The Board believes that any meaningful modification would, by necessity, require significant input from the state's cable television operators and other interested parties. For this reason, the Board requested that the industry provide a proposal on the form of combined tariff/rate card it sought to institute. Since the industry did not provide a proposal and interested parties were not provided an opportunity to offer comment, the Board declines to modify the current tariff/rate card format. The industry is within its rights to petition the Board for a further rulemaking in this matter. However, the Board would expect a proposed form of rate card and/or tariff to be included in the petition.

COMMENT

The LTCTAC stated that the Board should include in N.J.A.C. 14:18-3.4(b) a requirement that cable television operators post full copies of their tariffs on a public website.

RESPONSE:

While the LTCTAC's concerns are understandable, the Board believes that its jurisdiction would not permit a directive that particular information be added to a web-based publication. The Board believes that the cable television industry's websites are their own informational services to publish information of their choosing to inform their customers about the services or products that they offer. The Board's rules as proposed allow for sufficient and reasonable procedures for obtaining or reviewing the tariffs by requiring that they be provided upon request.

Pole, trench and conduit rental

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AT&T Communications of New Jersey, L.P., TCG Delaware Valley, Inc., and Teleport Communications New York, in jointly filed comments as AT&T, supported the proposed amendments to N.J.A.C. 14:18-2.9 through -2.12, which adopts the same conduit formula used by the Federal Communications Commission (FCC), and permits aggrieved conduit renters to petition the Board in disputes over rates, terms and conditions. AT&T endorsed, as pro-competitive, the extension of pole and conduit rate regulation to third party attachers, rate imputation to infrastructure owners and the requirement that owners share in pole and conduit modification costs. AT&T also set forth certain considerations it believes are important for the Board to consider in implementing the proposed modifications, such as requiring utilities to furnish a requesting attacher data necessary to calculate pole and conduit rent, enforcement timelines and notice procedures for modifications.

RESPONSE:

The Board acknowledges AT&T's comments and endorsement of the proposed amendments. The Board further notes that it has the authority to effect the implementation of suggestions put forth by AT&T without further rulemaking.

COMMENT:

Public Service Electric & Gas Company (PSE&G), in a comment filed after the close of the comment period, indicated its belief that the Board, in its cable rules, lacked the authority and jurisdiction to regulate pole and conduit rates as they apply to gas and electric companies.

RESPONSE:

The distinction between the Board and the OCTV does not operate to divest the Board of its full authority over all cable television companies and public utilities in the State. N.J.S.A. 48:5A-20 and -21 clearly indicate that the Board has jurisdiction in the event of a dispute, and that it is appropriate to conform its rules to changes in federal law and to implement the formula developed by the FCC. This Board authority to determine appropriate rates or compensation applies only in the event parties have been unable to reach an agreement.

Outage Credits

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COMMENT:

The NJCTA expressed concern that the Board's proposal to the outage credit rule, N.J.A.C. 14:18-3.5, tightens the Board's already restrictive outage credit policy and that since cable television is not a "lifeline" service, the industry does not understand the reasoning for the proposed amendment. Furthermore, the NJCTA contended that no other Board regulated industry has to abide by such an outage credit policy and that the rule is punitive to the cable television operator. The NJCTA stated that since there is a bill pending before the Legislature that would address this matter, there should be no rush to modify it prior to action by the Legislature. The NJCTA contended that the rule as written was not in keeping with the Cable Television Act at N.J.S.A. 48:5A-11a, which states that outages of six hours or longer would require action from the customer seeking such a credit. However, the NJCTA offered a compromise position: a three-hour outage credit policy, as long as the requirement for the automatic outage credit is removed.

The DRA stated that it believes that the Board's original proposal for the outage rule, N.J.A.C. 14:18-3.5, found at 35 N.J.R. 112(a), provides more protection for the customer than does the amended proposal published in the Notice of Administrative Correction at 35 N.J.R. 1047(a). The original proposal required cable television operators to provide an automatic outage credit where 10 or more customers were without service for three or more hours. The revised proposal requires a cable television operator to provide an automatic outage credit only where the outage affects an entire node or nodes.

The LTCTAC stated that the outage credit rule should be further modified from the proposal of 35 N.J.R. 112(a) to require that if five or more customers are affected by an outage, that an automatic credit be issued on the next bill. B. Sachau stated that the proposal should provide an outage credit after one hour that affected more than 10 people and stated further that cable television companies should never be exempt from providing credits to their customers, because cable television rates are so high. The LTCTAC also stated that the outage credit rule should be further modified from the proposal of 35 N.J.R. 112(a) to require that if five or fewer customers are affected by an outage, that a credit be given if the customer calls the cable television operator.

RESPONSE:

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Upon review of the extensive comments received on this rule, the Board believes that the cable television industry's compromise position, a three hour outage credit without the automatic credit requirement, is reasonable. The Board believes that the compromise position reached is beneficial to the state's 2.5 million cable television customers because it provides for the three hour outage credit even though it requires positive action on the part of the customer to receive the credit. The Board also believes the compromise would not be punitive to the cable television operator.

The proposals by RPA and LTCTAC are predicated upon the ability of the individual cable company to recognize service outages on an individual customer basis, which is not a technology that exists for all cable operators. Cable operators can, however, determine outages "above the node" or at the sub-hub, but the number of customers below the hub may vary significantly. Thus, an outage rule based upon the number of customers affected could be difficult to implement on an automatic basis. In addition, the Board notes that there is a bill pending before the Legislature that could amend the outage credit policy to require cable television companies to provide automatic outage credits. Therefore the Board chooses to await the outcome in the Legislature.

Billing

COMMENT:

The DRA stated that revisions to the Board's rules at N.J.A.C. 14:18-3.7 are a step in the right direction; however, they do not go far enough. The DRA supported the requirement that cable television operators fully itemize their bills so that customers know what they are getting for what they are paying. The DRA, however, stated that the Board should require that cable television operators provide all channels above the basic tier on an à la carte basis. The DRA stated that any practice requiring customers to purchase full programming tiers so that they might be able to watch only a few channels is unduly restrictive.

RESPONSE:

The Board supported à la carte pricing during the early rounds of rate regulation, when all but premium services were subject to state or federal regulatory scrutiny. The Board recognized how such

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a degree of choice would have allowed customers to have better control on the cost of their cable television service. However, the FCC has preempted state jurisdiction in this area. In general, once a cable television operator has satisfied the minimum carriage requirements for the basic service tier (i.e., all local broadcast stations, those declaring must-carry status, and public, educational and governmental (PEG) access channels), the FCC has allowed the cable television operator and the entity that owns the channel or programming service to negotiate the terms and conditions that will govern carriage of the channel on the cable television system. The negotiations can include whether the channel is offered as part of a package with other programming, or on a per-channel à la carte basis. Given the federal preemption on this issue, the Board declines to include à la carte pricing requirements within our rules.

COMMENT:

The NJCTA commented that proposed amendment at N.J.A.C. 14:18-3.7, requiring cable television companies to itemize all services and provide prices for each component, would be difficult to administer and would result in confusion to the customer. The NJCTA stated that package rates do not always correspond to individual tier rates published in tariffs because a discount may be provided for subscribing to a higher level of service. In addition, the NJCTA stated that the proposal was aimed at dictating how cable television companies describe and market their services and was an attempt to impose a unit pricing model that does not work. The NJCTA also claimed that any further breakdown of information on a customer's bill would result in less understanding of the services received and would be in contravention of the Board's goal and the federal requirement that cable bills be "clear, concise and understandable." Nevertheless, the NJCTA offered a compromise position. The NJCTA asked that the Board amend the rule to allow, instead of notice on the individual bill, cable television operators to provide a bi-monthly notice by way of bill insert on the packages provided.

RESPONSE:

Cable television customers are entitled to have billing statements that clearly enumerate what services they are receiving as part of a service package. N.J.A.C 14:18-3.4(d) imposes a duty on cable operators to assist customers in selecting the rate schedule most favorable for their individual requirements. The Board fails to see how listing a service package and detailing the elements and costs of those elements will be confusing to customers. The rule does not impose a unit pricing model; it merely requires disclosure of prices established by the cable operator. Since most packages offered to

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customers, as evidenced from cable television company marketing and rate information, essentially include established service tiers and some à la carte offerings, the additions to bills should be minimal. The proposal seeks to inform the customer of the elements and costs for services within packages they have already purchased, and the Board believes it will have no impact on a cable television company's marketing or pricing of those services. It will, however, provide customers with information on which to make informed decisions on which services or packages meet their needs. The Board is not convinced that such a requirement would lead to more confusion on the part of the customer. However, the NJCTA has pointed out that some billing systems cannot be readily adapted to the proposed rule. While the Board is persuaded that the provision might cause substantial cost to some cable television operators that do not have billing systems that will accommodate this requirement, the Board believes that a change to the rule of this magnitude is substantive. Therefore, the Board will propose, at a later date, an amendment to the rule that will allow cable companies the option to annually elect to provide the service package component pricing information in a bi-monthly bill.

COMMENT:

The LTCTAC requested that the Board, in N.J.A.C. 14:18-3.7, require that the cable television operator itemize franchise fees.

RESPONSE:

N.J.A.C. 14:18-3.7(a)8 requires that the cable television operator show "any other separate fees" on a customer's bill and the Board believes that this requirement fulfills the request of the LTCTAC.

COMMENT:

The LTCTAC requested that the Board amend N.J.A.C. 14:18-3.8 to state that cable television operators are encouraged to offer its customers as many payment methods as are practical.

RESPONSE:

It is in the best interest of cable television operators to offer as many payment methods as practical. The Board believes that, to the extent practical, the state's cable television operators do offer as many payment options as possible and declines to memorialize the practice by rulemaking.

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COMMENT:

The DRA commented that it supports the amendment to N.J.A.C. 14:18-3.8, which requires a prorated refund when a customer is electronically disconnected.

RESPONSE:

The Board notes the DRA's endorsement.

COMMENT:

The NJCTA requested that the Board not adopt the requirement for a second notice of disconnection contained in the proposed amendment to N.J.A.C. 14:18-3.9, if the initial notice is not carried out within 30 days. The NJCTA claimed that cable television companies work with customers to encourage payments or make payment arrangements. The NJCTA further contended that by adopting the rule, the Board might increase the number of disconnections, in that the cable television operator would feel compelled to carry out the disconnection notice and not work with the customer.

RESPONSE:

The Board believes that proper notice of disconnection is necessary and is encouraged even when a payment arrangement is made after a disconnection notice is provided. The Board is not convinced that the rule as proposed would result in more disconnections insofar as the company would feel bound to carry out the disconnection notice within the timeframe and might be willing to work with the customer with a payment arrangement. The Board believes that the time provided from the date of the notice of disconnection to the actual disconnection (15 days) is sufficient time for the cable television operator and the customer to make payment arrangements. This rule is particularly important where cable companies as a matter of policy decline to make payment arrangements with customers in arrears. Therefore, the Board declines to make any modifications from the proposal to N.J.A.C. 14:18-3.9.

COMMENT:

The LTCTAC requested that the Board amend N.J.A.C. 14:18-3.9(a) to require that delinquent accounts be provided 25 days' notice prior to disconnection.

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RESPONSE:

The LTCTAC does not provide any reasoning for this modification. The existing 15 day notice requirement, which effectively gives the customer 30 days before service is interrupted, provides ample time for a delinquent customer to pay the bill. The Board has already amended the rule to require that if a cable television operator fails to act on a notice of disconnection, it must reissue the notice. Therefore, no further modification is warranted.

COMMENT:

The LTCTAC suggested that the Board amend N.J.A.C. 14:18-3.19(a) to allow a customer to notify a cable television company of a billing error by telephone if the cable television company has a way to track incoming calls; the current rule requires that the customer notify the cable television company in writing.

RESPONSE:

The Board does not believe that this section should be modified. It is sound policy to have all billing disputes put in writing so that there is no question as to the nature of the dispute. Any interpretation due to telephone transcription could be problematic. Therefore, the Board declines to modify this provision.

Late Fees

COMMENT:

The DRA stated that it is not convinced that the Board has fully addressed the late fee issue. The DRA stated, in its comments to a Board proceeding in 1998 in Docket No. CX98030128, which was closed without final action to amend the rule, that late fees averaged over \$5 per month with some cable television operators charging as much as \$14.95. While the DRA recognized that late fees account for increased costs to the cable television operator, it submitted that it should only be allowed for recovery of legitimate incremental costs. The DRA also stated that the monopoly enjoyed by cable television operators mandates that the Board take a proactive approach to protect consumers. In Docket No. CX98030128, the DRA raised significant questions regarding the fairness of imposing late

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fees on ratepayers. The DRA therefore urged the Board to re-open a rulemaking proceeding on the issue of late fees.

RESPONSE:

The Board has opened rulemaking proceedings regarding the late fee issue three times. Each time, there were significant enough concerns from the cable television industry that the Board could not adopt its proposal. As the DRA noted, late fees have bearing in that collection of overdue bills results in additional administrative costs. However, while the Board is in favor of capping late fees, it cannot do so if such a proposal would pose an onerous burden on the state's cable television industry. It is noted, however, that, at this time, only two cable television systems in the state charge a late fee of more than \$5.00 and these charge \$6.00. On average, late fees are approximately \$5.00 for each month that a bill is deemed past due industry wide, although some cable television systems do charge less.

However, to address the DRA's issues, we note that there is pending state legislation that addresses this matter and therefore the Board chooses to await the outcome of the bill before considering reopening a proceeding regarding late fees.

Customer Service

COMMENT:

The DRA supported the amendments to N.J.A.C. 14:18-3.2, which provide that: a) a cable television operator may not refuse to connect to any customer following a directive from the OCTV except in extenuating circumstances outlined in the rule; and b) if the cable television operator does refuse to connect, that the customer has the right to appeal the decision to the OCTV. The DRA stated that it these amendments protect customers against discriminatory behavior by cable television companies and provide customers with access to cable television service.

RESPONSE:

The Board acknowledges the DRA's comments in support.

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COMMENT:

The LTCTAC requested that the Board amend N.J.A.C. 14:18-3.11 to address disputes relating to monies that might be owed to a customer as a result of property damage caused by the cable television company

RESPONSE:

The intent of this section is to preserve the customer's right to service, and to prevent its interruption during the course of an investigation of a billing dispute by the OCTV. Property damage disputes have no effect on a customer's ability to obtain or continue receiving service, and would not be appropriate here. The Cable Television Act at N.J.S.A. 48:5A-49 already provides adequate protection and requires cable television companies to indemnify building owners for any damage caused by installation, operation or removal of cable television facilities, and for any liability which may arise out of such installation, operation or removal.

COMMENT:

The LTCTAC requested that the Board amend N.J.A.C. 14:18-3.12(b) to its original language which stated that the company must reschedule a missed appointment within 24 hours unless good cause is shown.

RESPONSE:

The Board's amendment to this section requires that a cable television company provide a rescheduled appointment within 24 hours or at a time that is convenient to the customer. The Board's amendment provides significantly more protection and flexibility for the customer in that it requires, in any case, that the cable television operator provide a new appointment to the customer within 24 hours, but the customer can request a different appointment timeframe if having a rescheduled appointment within 24 hours is inconvenient to them.

COMMENT:

The DRA stated that the Board's rules at N.J.A.C. 14:18-3.12, which requires a cable television company to offer a four hour appointment window to customers, is in the general spirit of the proposal that the DRA suggested, which would have required a two hour appointment window, and

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therefore supports the amendment as written. The DRA stated that it is confident that the new rule will improve the level of service provided by cable television operators to their customers.

RESPONSE:

The Board notes the DRA's comments. The Board for the record would like to note that, as part of its proposal, it has included portions of the federal customer service standards to the extent that they address areas not covered by current rules or exceed those rules. Changes in this section provide, among other things, a maximum four-hour appointment window, rescheduling of missed appointments at a time convenient for the customer, and a disallowance for the cable television company to cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. As noted by the DRA, these proposals incorporate the basic premise of its recommendation. The Board believes that these changes provide for additional customer protection, and since they impose no further burden that is already present in existing state or federal rules, do so without increasing cost to cable television operators.

Equipment

COMMENT:

The DRA supported the Board's amendment to N.J.A.C. 14:18-3.14, which provides that a cable television company can require a customer to pay for special equipment but eliminates the allowance for overhead charged over and above the cost of equipment.

RESPONSE:

The Board notes the DRA's endorsement.

COMMENT:

The LTCTAC recommended that the Board amend N.J.A.C. 14:18-3.23(a) to state that a cable television operator may not charge more for a lost or stolen converter than the actual replacement cost of the lost or stolen equipment at the time of replacement.

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RESPONSE:

The Board declines to modify this provision. The intent of this provision is to prevent a cable television operator, who would be required to replace the equipment if lost or stolen, from absorbing any mark-up. If the original converter cost \$100.00 and that converter is no longer available but its replacement, with comparable features, costs \$150.00, the cable television operator should not be required to absorb the cost for replacement.

Office Closings

COMMENT:

The LTCTAC recommended that the Board amend N.J.A.C. 14:18-5.1(c) to require that a cable television company petitioning the Board for closure of its local office notify each affected municipality. Further, the committee recommended that the Board require a cable television company to put the OCTV's toll-free number in the notice of office closing posted at the affected location.

RESPONSE:

The Board believes that its current rule, which requires that the cable television company simultaneously notify its customers and the clerk of each affected municipality of a pending application to close or relocate an office, is sufficient to provide notice to affected municipalities. The Board has already modified subsection (c) as part of the proposal to provide that the notice required at the location of the office closing must contain the OCTV's toll-free number.

Notices

COMMENT:

The LTCTAC suggested that the Board amend N.J.A.C. 14:18-5.2 to require that the names, addresses and telephone numbers of responsible officials during and after normal working hours, which is currently required to be provided to the OCTV and kept current, also be provided to the clerk of each municipality.

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RESPONSE:

The Board declines to make this revision due to the sheer burden of paperwork that this would entail for the cable television operator. In addition, the responsible officials used by the OCTV may not be the same officials that municipalities need to contact. The Board believes this matter is more appropriately a municipal matter that should be handled on that level.

Complaints

COMMENT:

The LTCTAC suggested that the Board amend N.J.A.C. 14:18-6.5 to require that in addition to maintaining complaint records for a year, and only supplying the records to the OCTV upon request, that cable television operators be mandated to supply the complaint statistics to the OCTV and the clerk of each affected municipality.

RESPONSE:

Due to federal and state customer privacy rules, the Board declines to revise this rule. As complaint officer for most of the state's 562 franchised municipalities, the OCTV is charged with ensuring that the cable television operator is answering complaints in a responsible manner. The OCTV supplies complaint statistics in the aggregate to requesting municipalities, but this report is free of personal information. However, the municipality may name itself as complaint officer for its residents, in which case all complaints initially unresolved by the cable television operator would be referred directly to it.

The Board notes that recently passed legislation requires cable television operators to file complaint statistics with the OCTV on a yearly basis. It is noted, however, that the Board has taken steps to ensure that these reports protect the privacy of individuals by way of Board order.

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Telephone Systems

COMMENT:

The NJCTA proposed eliminating the reporting requirement of N.J.A.C. 14:18-7.6 if a cable television company is meeting the federal customer service response standard, incorporated in the rules herein adopted as N.J.A.C. 14:16-7.8.

RESPONSE:

The Board notes the NJCTA's position, but also notes as it did in responding to the NJCTA's informal comments that, following a general ongoing audit by OCTV staff, the cable television industry has not demonstrated consistent compliance with the federal standard. The Board further notes that staff's finding would not have been possible absent the reporting requirement. Therefore, in order to monitor performance in keeping with federal service obligations, there is no opportunity to relieve the industry of these filings. In addition, the NJCTA has not provided any specifics on such issues of how, in the absence of the existing reporting requirement, and the consolidation of call centers by its member companies, compliance with the federal standard would be verified. In the absence of a reasonable alternative proposal to the existing requirement, the Board declines to modify this section.

COMMENT:

The DRA supports the Board's adoption of the federal telephone answering standards at N.J.A.C. 14:18-7.8.

RESPONSE:

The Board notes the DRA's endorsement.

Plant

COMMENT:

The LTCTAC stated the Board should require that markings to cable television company-owned equipment required under N.J.A.C. 14:18-2.5(a)1 be permanent.

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RESPONSE:

The Board believes the rule adequately addresses the issue of markings. Without documented evidence that this is a problem, the Board declines to modify this section.

Franchising

COMMENT:

The LTCTAC suggested that the Board amend N.J.A.C. 14:18-11.2 to require that a cable television operator provide information in a municipal consent application regarding its system, such as descriptions of analog and digital services carried, pay-per-view programming, and other telecommunications services offered including cable modem service, voice grade telephone service and other non-television service. The information requested is substantially different than what is required by the Board currently.

RESPONSE:

The Board believes that the language contained in subsection 11.2 requires the cable television operator to provide information regarding what it is offering in its system. A municipality, during its review of the municipal consent application, may, consistent with federal law, determine it needs additional information. The LTCTAC did not provide a reason for requesting these revisions and the Board does not believe that they are necessary. In addition, the LTCTAC is asking the Board to require cable television companies to provide information for services that cannot be regulated by municipal or state authorities, such as cable modem service and therefore the Board declines to modify this provision.

COMMENT:

The LTCTAC suggested modification of N.J.A.C. 14:18-11.9 and -11.10 so that a cable television operator that modifies its municipal consent application provides the municipality with three copies of the revision.

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RESPONSE:

While the Board understands the concerns of the LTCTAC, the Board does not believe this problem to be sufficiently widespread to warrant additional rulemaking. The Board believes that the municipality can handle this matter administratively on a case-by-case basis. If needed, the municipality should request that the cable television company provide additional copies of the amendatory information.

Rates and Rate Filings

COMMENT:

The NJCTA proposed replacing N.J.A.C. 14:18-14.4, Discrimination in rates, which provides that no cable television company shall impose any excessive, unreasonable, unjustly discriminatory or unduly preferential individual or joint rate, charge or schedule for any service applied or rendered by the cable television company and that no cable television company shall adopt any unjust, unreasonable or discriminatory classification in the making or as the basis of any individual or joint rate, charge or schedule for any service supplied or rendered by the cable television company with language from federal law as it believes federal law has preempted this requirement.

RESPONSE:

Although NJCTA proposed to replace this section with language from federal law, it has failed to submit proposed language. Hence, the Board is unwilling at this time to reject, modify or adopt it.

COMMENT:

The DRA has proposed regulations for the purpose of obtaining additional data from cable television operators when filing FCC Forms 1205 and 1240. The DRA contends that it has encountered problems in reviewing the filings by the cable television operators because records are not kept that permit analysis of these filings in an appropriate manner. The DRA requested the Board adopt new rules requiring cable television operators to keep and submit to the Board and the DRA the detailed records by system regarding equipment and installations activities and profit and loss statements.

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The DRA also asked the Board to require filings that identify all employees and costs allocated between cable and non-cable services in order to address the potential for cross subsidization between traditional cable television services and non-cable television services such as cable modem service.

Furthermore, the DRA urged the Board to require cable television operators to provide the Board and the DRA, upon request, all management reports generated by the company related to its equipment and installation activities.

RESPONSE:

While the DRA's suggested rules may have merit, the Board is of the opinion that these proposals are more appropriately handled in the readoption of Chapter 17, which is due to expire in March, 2004. Each of these suggestions is designed to generate documents and records for use in the ratemaking process to support or refute showings by a cable company under the rules of practice for the Office of Cable Television. Because the filing requirements for the ratemaking process is controlled by Chapter 17 and these documents would be filed for ratemaking purposes, any rules based upon these suggestions would properly belong in Chapter 17.

Summary of Changes Upon Adoption

The changes upon adoption include changing N.J.A.C. 14:18-4.5(c) from "said obligation. A cable" to "said obligation, a cable" to correct an apparent typographical error.

The Board is changing, upon adoption, the term in N.J.A.C. 14:18-2.9(a)6 from "total common on pole" to "total common space on pole" to correct an apparent error dating back from the rule's original adoption. The phrase "total common space on pole" is appropriate because it deals with the common space available on a pole and the term "total common on pole" does not make sense in the context of the rule.

The Board is also changing the term "senior and disabled citizens" to "senior and/or disabled citizens" in N.J.A.C. 14:18-3.20. This change recognizes that a cable television company may offer the discount only to senior citizens if it so chooses. Also changed is the correct cite for effective

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competition in federal law to 47 CFR § 76.915, not 76.905 as currently written and other minor typographical corrections that do not change the meaning of the rules.

The Board is also modifying N.J.A.C. 14:18-3.5 insofar as cable companies will be required to provide outage credits to customers after three hours, as outlined in the proposal, but that a customer wishing to receive a credit will be required to call or write the cable television company to receive the credit, as required in the expiring rule.

In N.J.A.C. 14:18-4.12(e) the Board is changing the phrase “from the effective date of this rule” to reference that the effective date of the rule shall be November 17, 2003, the date of publication of the adoption notice in the New Jersey Register.

The Board is also changing the expiration date from the proposal. In the proposal the Board stated that the expiration date for the new rules would be three years from expiration or June 30, 2006. However, as the expiration date was extended to December 27, 2003, the Board modified the expiration date to December 27, 2006. The Board had intended a three year review of the rules and since the adoption did not take place until November 17, 2003, the Board believed that to measure the expiration date from the date of the extension of the expiration date will give staff and other interested parties ample time to review the rules and determine what rules should be changed, if any.

The remainder of the readoption and proposed amendments to N.J.A.C. 14:18 is being readopted without change from the proposal of January 6, 2003, as published at 35 N.J.R. 100(a) and the Notice of Administrative Correction of February 19, 2003, as published at 35 N.J.R. 1047(a).

Executive Order No. 27 Statement

While many of the rules proposed herein are subject of federal laws, rules, regulations and standards, including franchising statute (47 U.S.C. § 546), technical regulations (47 C.F.R. Part 76, Subpart K) and rate regulations (47 C.F.R. Part 76, Subpart N), upon review of the applicable Federal documents, the Board does not believe that any of the rules proposed herein conflict or exceed Federal

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standards.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 14:18.

Full text of the amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

14:18-2.9 Calculation of pole attachment rent

(a) In cases where the Board must determine the appropriate rental rate for cable television attachments on utility poles, it shall be calculated in the following manner:

1. - 5. No change.

6. Footage of	=	1.0 feet		
common		<hr/>		
space		Total usable	Multiplied by	Total common
allocated to		space on pole		*space* on pole
cable television				
or third party				
attacher				

14:18-3.5 Outage credit

(a) The cable television operator shall credit [subscribers] ~~customers~~ for outages, as defined in these rules, as follows:

1. - 4. (No change from proposal.)

5. In order to obtain a credit, customers must notify the cable television company by

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phone or in writing within 30 days after any such outage, or else within 30 days notify the Office or other designated complaint officer. *[However, in instances where an outage lasts three or more hours and impacts the cable television company's distribution plant to the extent that an entire fiber optic node, or several nodes, are affected, a credit shall be issued to all affected customers and will not require notification by the customer.]*

6. (No change from proposal.)

(b) - (f) (No change from proposal.)

14:18-3.20 Discounts for senior and~~*/or*~~ disabled citizens

(a) Prior to offering a senior and~~*/or*~~ disabled citizen discount, a cable television company shall:

1. - 3. No change.

(b) Prior to altering or discontinuing a senior and~~*/or*~~ disabled citizen discount, a cable television company shall:

1. - 2. No change.

(c) New customers shall be informed in writing when a senior and~~*/or*~~ disabled citizens discount program is available and the eligibility requirements for participation.

(d) No change.

(e) Participation in a senior and~~*/or*~~ disabled citizens discount plan shall not affect a customer's eligibility for other generally offered discounts and marketing promotions.

14:18-4.5 Compensation for taking because of installation of cable television facilities

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(a) - (b) No change.

(c) If no response to the notice is forthcoming within 30 days, the cable television operator has a statutory right and a franchise obligation to provide cable television service. In order to enforce this right and satisfy said obligation*[. A]* ~~*, a~~* cable television company must apply for an administrative approval for access. To apply, said company must submit to the Board of Public Utilities, copies of its notice and a specific description of the proposed method of installation.

1. - 5. No change.

(d) - (g) No change.

14:18-4.12 Home run wiring in MDU settings

(e) After November 17, 2003, franchised cable television operators shall include a provision in all service contracts entered into with MDU owners setting forth the disposition of any home run wiring in the MDU upon the termination of the contract.

14:18-14.7 Effective competition

(a) Upon a finding by the Board that the Federal Communications Commission has decertified rate regulation for any cable television system, pursuant to 47 C.F.R. § *[76.915]* ~~*76.905*~~, on a final finding of effective competition, after April 17, 2000, the following provisions may no longer apply to that system:

1.-9. No change